

NTSB Order No. EA-5183

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 19th day of October, 2005

Docket SE-17098

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on August 24, 2004, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an order of the Administrator, finding that respondent had violated 14 C.F.R. 91.13(a), 119.5(g), 135.293(a), 135.293(b), and 135.299(a) of the Federal Aviation Regulations.<sup>2</sup>

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The law judge reduced the suspension proposed by the Administrator from 180 days to 150 days. Respondent does not appeal the substantive findings of rule violations; he appeals only the suspension amount, arguing that a suspension of only 60 days is warranted. We deny the appeal.

Respondent was the pilot-in-command of a helicopter flight transporting five tourists from Everglades Park to a point in Miami, Florida. The company for which respondent was flying did not have a Part 135 certificate. Thus, transporting passengers without the required certificate and without necessary testing and checks of his piloting skills was a violation of the Administrator's regulations, unless it could be found that the flight was not for hire or compensation. In addition, the Administrator charged an independent carelessness/recklessness violation in that, on take-off, respondent barely missed some power lines and had to fly under them (between them and a major highway).

The law judge affirmed all the Administrator's allegations. He rejected respondent's claims that, because he had received no payment for the flight, it was not a commercial flight and there were no Part 135 violations. The law judge found that respondent knew the flight required a Part 135 certificate, which his

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(continued...)

that endanger the life or property of another. Section 119.5(g) requires an operating certificate and operations specifications when operating as a direct air carrier or a commercial operator. The remaining sections require various types of pilot testing for Part 135 certificate holder operations.

company did not have. The law judge further found that respondent received intangible benefit by agreeing to perform the flight at the request of Helibroker, a broker of helicopter services and, therefore, it did qualify as compensation under long-standing precedent. See, e.g., Administrator v. Rountree, 2 NTSB 1712 (1975), aff'd 556 F.2d 588 (9<sup>th</sup> Cir. 1977). The law judge also affirmed the carelessness violation, finding that respondent had not taken sufficient care in reconnoitering the take-off and landing location, and somehow ignoring various warnings he had received about the power lines.

As noted, respondent challenges the law judge's imposition of a 150-day suspension. Although the Administrator did not explain her choice of 180 days, nor the breakdown, the law judge divided that suspension as follows: 120 days for the Part 135 violations, and 30 days in connection with flying under the power lines.<sup>3</sup> Respondent claims that Administrator v. Briggs, NTSB Order No. EA-4502 (1996), supports only a 30-day suspension which, when combined with the 30-day carelessness suspension, would equal a total suspension of 60 days.

We agree with the Administrator that this case is not on all fours with Briggs, and that even if it were, in Administrator v. Tsosie, NTSB Order No. EA-4679 (1998), with more favorable facts, the Board nonetheless imposed a 90-day suspension where there was

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<sup>3</sup> The Administrator also failed to refer to her written sanction guidance policy which, if consistent with the proposed sanction, would have ended the discussion. See 49 U.S.C. § 44709(d)(3).

no independent carelessness finding.<sup>4</sup> Tsosie (at n.7) also reviewed many cases where a wide range of suspension periods were affirmed for unauthorized operations under Part 135.

Administrator v. Wronke, NTSB Order No. EA-4703 (1998), is also informative, as it adopted a 90-day suspension for a low flight in an unregistered helicopter where no passengers were involved. In addition, the law judge made a credibility finding that the tour operator asked respondent whether he had a Part 135 certificate and the law judge's decision makes clear that he believed respondent said yes. To the extent that respondent's conduct was a willful deception to obtain business, the sanction in this case is more than lenient.

In sum, respondent's citation to Briggs, supra, does not warrant sanction reduction, and he offers no other reason to modify the law judge's decision, which we find reasonable in the circumstances.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 150-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>5</sup>

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS and HERSMAN, Members of the Board, concurred in the above opinion and order.

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<sup>4</sup> There was a residual § 91.13(a) finding, but that finding does not implicate sanction amounts.

<sup>5</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).